

SUPREME COURT OF MISSISSIPPI

Walker v. Whitfield Nursing Center, Inc.

931 So. 2d 583 (Miss. 2006) · No. 2005-CA-02248-SCT · Decided June 8, 2006

SUMMARY

The Mississippi Supreme Court affirmed summary judgment for Whitfield Nursing Center in a medical-malpractice action arising from a nursing-home resident's fall and subsequent death. The court held that the plaintiff failed to comply with Mississippi Code section 11-1-58 by not filing an attorney's certificate of expert consultation, or timely providing substitute expert information, with the complaint. The court also concluded that the statutory noncompliance left the plaintiff unable to state or prove the medical-malpractice claim.

CASE DETAILS

|                       |                                                                                                                                                                                                                          |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Mississippi                                                                                                                                                                                             |
| WRITING FOR THE COURT | Easley, Justice; Smith, C.J.; Waller, P.J.; Cobb, P.J.; Carlson, J.; Dickinson, J.; Randolph, J.; Easley, J.                                                                                                             |
| JURISDICTION          | Mississippi                                                                                                                                                                                                              |
| DECIDED               | June 8, 2006                                                                                                                                                                                                             |
| DOCKET                | 2005-CA-02248-SCT                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Appeal from a summary judgment dismissing a medical-malpractice and wrongful-death action with prejudice.                                                                                                                |
| STANDARD OF REVIEW    | De novo review applies to a trial court's grant of summary judgment. Summary judgment is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. |
| PRECEDENTIAL VALUE    | Published en banc opinion of the Supreme Court of Mississippi; precedential.                                                                                                                                             |
| PARTIES               | Dorothy Walker as the Administratrix of the Estate of Vadie Walker, Deceased v. Whitfield Nursing Center, Inc. d/b/a Whitfield Nursing Home                                                                              |

TOPICS

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## PRACTICE AREAS

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## QUESTIONS PRESENTED

1. Whether Walker complied with Mississippi Code section 11-1-58(1) by filing the required attorney certificate of expert consultation with the complaint or within the statutory period.
2. Whether Mississippi Code section 11-1-58(7) permitted Walker to substitute expert information for the certificate after the statutory deadline.
3. Whether Whitfield waived the statutory defense by failing to expressly assert noncompliance with section 11-1-58 in its answer.

## HOLDINGS

1. A plaintiff bringing a professional-negligence action in which expert testimony is required must strictly comply with section 11-1-58 by filing the attorney's certificate of expert consultation with the complaint, subject to the statute's limited timing provisions. Walker's later-filed affidavits did not satisfy that requirement.
2. Section 11-1-58(7) permits expert information to be furnished in lieu of the attorney certificate, but it does not eliminate or extend the timing requirement imposed by section 11-1-58(1).
3. Failure to comply with section 11-1-58's mandatory prerequisites leaves the plaintiff unable to state or prove the professional-negligence claim, and the complaint must be dismissed.
4. The court did not reach the merits of Walker's waiver argument because Walker failed to raise the issue in her response to the summary-judgment motion, and the trial court did not address it.

## KEY QUOTATIONS

*“Clearly, Walker did not comply with the mandatory prerequisites of Miss.Code Ann. § 11-1-58(1)(a) when she filed her suit.”* (931 So. 2d at 589)

*“Therefore, the time for compliance as stated in sub-section (1) applies to sub-section (7).”* (931 So. 2d at 590)

*“The language of Miss.Code Ann. § 11-1-58 is clear and unambiguous that based on the failure to comply with its mandatory statutory requirements, the complaint shall be dismissed.”* (931 So. 2d at 591)

## FACTUAL BACKGROUND

Dorothy Walker, as administratrix of Vadie Walker's estate, sued Whitfield Nursing Center after Vadie fell while attempting to climb out of her bed and later died. The complaint was filed and served without the attorney certificate required by Mississippi Code section 11-1-58, and no expert report or certificate was supplied within

the statutory period. Walker first produced attorney affidavits and an expert report more than a year after filing suit, in response to Whitfield's summary-judgment motion.

## PROCEDURAL HISTORY

Walker filed suit in the Circuit Court of Alcorn County after Vadie Walker fell from her nursing-home bed and later died. Whitfield moved for summary judgment based on Walker's failure to comply with Mississippi Code section 11-1-58, which required an attorney's certificate of expert consultation or timely expert information. The circuit court granted summary judgment and dismissed the case with prejudice; the Supreme Court of Mississippi affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Stuckey v. Provident Bank, 912 So. 2d 859, 864 (Miss. 2005)
- Jenkins v. Ohio Cas. Ins. Co., 794 So. 2d 228, 232 (Miss. 2001)
- Russell v. Orr, 700 So. 2d 619, 622 (Miss. 1997)
- Richmond v. Benchmark Constr. Corp., 692 So. 2d 60, 61 (Miss. 1997)
- Northern Elec. Co. v. Phillips, 660 So. 2d 1278, 1281 (Miss. 1995)
- Saucier ex rel. Saucier v. Biloxi Reg'l Med. Ctr., 708 So. 2d 1351, 1354 (Miss. 1998)
- Tucker v. Hinds County, 558 So. 2d 869, 872 (Miss. 1990)
- Heigle v. Heigle, 771 So. 2d 341, 345 (Miss. 2000)
- Palmer v. Anderson Infirmary Benevolent Ass'n, 656 So. 2d 790, 794 (Miss. 1995)
- Williamson ex rel. Williamson v. Keith, 786 So. 2d 390, 393 (Miss. 2001)
- Simmons v. Thompson Mach. of Miss., Inc., 631 So. 2d 798, 801-02 (Miss. 1994)
- Shaw v. Burchfield, 481 So. 2d 247, 252 (Miss. 1985)
- Lyle v. Mladinich, 584 So. 2d 397, 398 (Miss. 1991)
- University of Mississippi Medical Center v. Easterling, 2006 WL 871302, at \*5 (Miss. 2006)
- Pope v. Brock, 912 So. 2d 935, 937 (Miss. 2005)
- Pinkton v. State, 481 So. 2d 306, 309 (Miss. 1985)
- Gambrill v. Gulf States Creosoting Co., 216 Miss. 505, 62 So. 2d 772, 775 (1953)
- Miss. Casino Operators Ass'n v. Miss. Gaming Comm'n, 654 So. 2d 892, 894 (Miss. 1995)
- Evans v. Boyle Flying Serv., Inc., 680 So. 2d 821, 825 (Miss. 1996)
- Claypool v. Mladineo, 724 So. 2d 373, 382 (Miss. 1998)
- Bowie v. Montfort Jones Memorial Hospital, 861 So. 2d 1037, 1043 (Miss. 2003)
- Guar. Nat'l Ins. Co. v. Pittman, 501 So. 2d 377, 389 (Miss. 1987)

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